

REMARKS

Applicant appreciates the Examiner's review of the application. Reconsideration and allowance of all claims are requested.

Claims 1 - 8 and 12 - 24 are currently pending, of which claims 1, 18, 19 and 20 are independent. Claims 9, 10 and 11 have been canceled without prejudice.

Applicant's previous arguments are hereby incorporated by reference in their entireties in addition to the Remarks discussed herein.

Double Patenting

Applicant notes that this rejection is currently a provisional double patenting rejection as neither this application nor U.S. Application No. 10/382,947 currently have claims indicated as allowable by the Examiner. At the time that either claims of this application and/or U.S. Application No. 10/382,947 are allowed, Applicant will revisit the necessity of filing a terminal disclaimer. Applicant respectfully requests that this rejection be held in abeyance at this time.

Interviews for Related U.S. Application No. 10/382,947

Applicant thanks Examiner Oyeibisi for the interviews granted February 25, 2010 and March 26, 2010 with Applicant's representative to discuss parent U.S. Application No. 10/382,947. During the interview, the following claim language was discussed:

wherein the structured financial asset generates a variable net cash flow, after the payment of premiums, based upon and timed by mortality payments and not based upon and timed by an expected mortality rate

This language is included in the independent claims of the current application and U.S. Application No. 10/382,947.

During the telephone interview of March 26, 2010, Applicant's representative and Examiner Oyeibisi and Applicant's representative discussed the claim rejection under 35 U.S.C. 102(e) of the above-identified claim element over the Herman reference.

Examiner Oyeibisi indicated that he had spoken with his supervisor and another examiner and all three agree that Herman does not disclose "wherein the structured financial asset generates a variable net cash flow, after payment of premiums, based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate."

As such, the 35 U.S.C. 102(e) rejection of the independent claim over Herman is overcome for the current application as in U.S. Application No. 10/382,947.

Claims 1 - 5, 7 - 8, 12 - 20 and 22 - 24 are patentable under 35 U.S.C. 102(e) over Herman (U.S. Publication No. 2002/0035489).

Claims 1 - 5, 7 - 8, 12 - 20 and 22 - 24 are patentable over Herman as indicated by Examiner Oyeibisi in the telephone interview dated March 26, 2010.

Herman does not disclose "wherein the structured financial asset generates a variable net cash flow, after payment of premiums, based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate."

As discussed during the interview, Herman discloses a system that uses an expected mortality rate to guarantee a predetermined cash flow through the use of a reinsurance policy. Under Herman, the cash flow is always at least as much as predicted by the expected mortality rate in a given policy period.

In contrast, the claimed invention has a *variable* net cash flow where payments are made based upon the number of actual mortalities during a given policy period. The variable net cash

flow in the claimed invention is not based upon and timed by an expected mortality rate, as found in Herman.

As discussed during the interview, there is a distinct difference between these payment schedules. As an example, assume that during a given policy period, five insured individuals are expected to die based upon expected mortality rates. Also, assume that during that given policy period only three insured individuals die.

1. Under Herman: The policy holder will be paid for all five *expected* deaths. Three will be paid using policy death benefits. The remaining two will be paid for using funds from the reinsurance policy. Thus, Herman always guarantees a minimum payment based upon the expected mortality rate, which is referred to as a "mortality guarantee".

2. Under the Claimed Invention: The policy holder will be paid for only the *three* actual death benefits. Thus, the claimed invention has a variable net cash flow "based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate". The claimed invention does not "guarantee" a minimum payment each policy period, and, in fact, embraces the variation from expected mortality rates, which results in higher returns in later years.

As is shown by this example, Herman does not disclose a variable net cash flow "based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate". Instead, Herman discloses that a "*predetermined* cash flow is guaranteed" based upon and times by expected mortality rates. Herman at paragraph 0009 (emphasis added).

The benefit to Applicant's invention is that it permits variable net cash flow, which in turn is used to cover increases in life expectancy and the corresponding length and timing of policy payments. Herman does the opposite and guarantees a minimum payment each year for a set duration.

Applicant's invention, as claimed, requires: "wherein the structured financial asset generates a variable net cash flow, after payment of premiums, based upon and timed by actual mortality payments and not based upon and timed by an expected mortality rate." Herman

discloses a system that is *not* based upon and timed by actual mortality rate and *is* based upon and timed by an expected mortality rate. Therefore, as discussed during the interview of July 29, 2009, Herman does not teach every element of the independent claims and the rejection should be withdrawn.

Therefore, independent claims 1, 18, 19 and 20 are patentable over Herman.

Dependent claims 2 - 5 and 7 - 8 and 12 - 17 depend from independent claim 1 and add further patentable features to the patentable features of the independent claim. Dependent claims 22 - 24 depend from independent claim 20 and add further patentable features to the patentable features of the independent claim.

Therefore, claims 1 - 5, 7 - 8, 12 - 20 and 22 - 24 are patentable over Herman for at least these reasons. Reconsideration and withdrawal of the rejection are requested.

Claims 6 and 21 are patentable under 35 U.S.C. 103(a) over Herman (U.S. Publication No. 2002/0035489).

Independent claims 1 and 20 are patentable over Herman as discussed above. Dependent claim 6 depends from independent claim 1 and adds further patentable features to the patentable features of the independent claim. Dependent claim 21 depends from independent claim 20 and adds further patentable features to the patentable features of the independent claim.

Therefore, claims 6 and 21 are patentable over the cited reference. Withdrawal of the rejection and allowance of all claims are respectfully requested.

CONCLUSION

Applicant believes the application is now in condition for allowance. Reconsideration and withdrawal of the rejections are requested.

Applicant strongly encourages the Examiner to call Applicant's representative at the below number to discuss any outstanding issues in the application.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies, to charge payment or credit any overpayment to Deposit Account No. 50-2228, under Order No. 027110.0104C1US from which the undersigned is authorized to draw.

Dated: April 5, 2010

Respectfully submitted,

By /Matthew J. Laskoski/
Matthew J. Laskoski
Registration No.: 55,360
PATTON BOGGS LLP
8484 Westpark Drive, 9th Floor
McLean, Virginia 22102
(703) 744-8055
(703) 744-8001 (Fax)
Attorney for Applicant